

## **Exhibit 19**

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.  
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Nicholas N. Paul in Support of Plaintiffs' Motion for Summary  
Judgment as to Defendant Dey

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FEBRUARY 10TH, 2003

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ORAL AND VIDEOTAPED DEPOSITION OF ROBERT ELLIS,  
PRODUCED AS A WITNESS AT THE INSTANCE OF THE  
PLAINTIFF(S), AND DULY SWORN, WAS TAKEN IN THE  
ABOVE-STYLED AND NUMBERED CAUSE ON FEBRUARY 10TH,  
2003, FROM 9:13 A.M. TO 5:36 P.M., BEFORE CYNTHIA  
VOHLKEN, CSR IN AND FOR THE STATE OF TEXAS, REPORTED  
BY MACHINE SHORTHAND, AT THE OFFICES OF COTCHETT,  
PITRE, SIMON & MCCARTHY, 840 MALCOLM ROAD, SUITE 200,  
BURLINGAME, CALIFORNIA PURSUANT TO THE TEXAS RULES OF  
CIVIL PROCEDURE.

1 Q. TERMIER?

2 A. YES, THAT'S RIGHT. THAT'S RIGHT.

3 Q. DID YOU INTERVIEW WITH MR. RICE?

4 A. NO, NOT AT THAT TIME, NO.

5 Q. AND WHAT WAS YOUR FIRST JOB TITLE?

6 A. MARKETING ASSISTANT.

7 Q. AND DID YOU GET SUBSEQUENTLY PROMOTED WHILE  
8 YOU WERE AT DEY?

9 A. I WAS PROMOTED TO A PRODUCT MANAGER  
10 APPROXIMATELY TWO YEARS LATER.

11 Q. APPROXIMATELY MARCH OF '94?

12 A. SOUNDS ABOUT RIGHT.

13 Q. ROUGHLY?

14 A. YEAH. I'M NOT SURE OF THE EXACT DATE.

15 Q. TO PRODUCT MANAGER, I'M SORRY, IS THAT  
16 CORRECT?

17 A. YES, PRODUCT MANAGER, THAT'S RIGHT.

18 Q. WHAT WERE YOUR DUTIES AND RESPONSIBILITIES AS  
19 A MARKETING ASSISTANT?

20 A. MORE OR LESS JUST HELPING OUT ON THE  
21 MARKETING SIDE, DOING EVERYTHING THAT HELEN ASKED ME.  
22 I DID A LOT OF COLLATERAL DEVELOPMENT, SALES  
23 COLLATERAL DEVELOPMENT, DID SOME SALES TRAINING, DID  
24 VARIOUS PRINT JOBS. ONE OF MY FIRST PROJECTS WAS JUST  
25 TO -- TO RESEARCH THE REIMBURSEMENT STATUS OF MEDICARE

1 AND MEDICAID, PUT TOGETHER THAT DATABASE.

2 Q. TELL ME ABOUT THAT, PLEASE. WHO ASSIGNED  
3 THIS PROJECT TO YOU?

4 A. THAT WAS HELEN. IT WAS SOMETHING THAT I  
5 BELIEVE THEY HAD STARTED BEFORE, BUT SOMETHING THEY  
6 PUT ME ON RIGHT AWAY IS JUST CALL ALL THE STATE  
7 AGENCIES AND RECORD WHAT THEIR REIMBURSEMENT  
8 STRUCTURES WERE AND THEN ASSEMBLE A DATABASE THAT WE  
9 HAD THAT FOR REFERRAL.

10 Q. AND DID YOU DO THAT, DID YOU ASSEMBLE THIS  
11 DATABASE?

12 A. YEAH, I GUESS I DID.

13 Q. WHAT WAS THE NAME OF THAT DATABASE?

14 A. I DON'T THINK I GAVE IT A NAME. IT WAS JUST  
15 A DATABASE OF INFORMATION. PROBABLY THE MEDICARE OR  
16 MEDICAID DATABASE IS WHAT WE GENERALLY REFERRED IT  
17 TO -- REFERRED TO IT AS.

18 Q. AND THIS IS A DATABASE THAT WAS ON THE  
19 MAINFRAME AT DEY?

20 A. NO. NO. IT WAS -- SIMPLY I THINK I JUST PUT  
21 TOGETHER AN EXCEL SPREADSHEET, YOU KNOW. FOR  
22 INSTANCE, ARKANSAS, REIMBURSEMENT STRUCTURE, WHETHER  
23 THEY REIMBURSED FOR GENERICS OR ALBUTEROL AT THE TIME.

24 Q. WOULD THIS HAVE BEEN ON YOUR COMPUTER SYSTEM  
25 AT DEY, JUST ON --

1 A. YEAH, IT STARTED ON MY COMPUTER SYSTEM.  
2 SURE.

3 Q. WOULD IT HAVE BEEN ACCESSIBLE BY EVERYONE  
4 ELSE IN THE ORGANIZATION OR IN THE ALTERNATIVE IF  
5 SOMEONE ELSE WANTED TO ACCESS IT WOULD THEY HAVE TO  
6 COME TO YOU AND YOU COULD ACCESS IT ON YOUR COMPUTER?

7 A. THEY -- AT THAT TIME THEY WOULD HAVE TO COME  
8 TO ME. I DIDN'T MAKE IT GENERALLY ACCESSIBLE. IT WAS  
9 JUST ON MY COMPUTER. I DON'T THINK WE -- I WAS TIED  
10 INTO ANY -- ANY LOCAL NETWORK AT THE TIME.

11 Q. WAS IT MULTI-PAGES OR JUST ONE PAGE, DO YOU  
12 RECALL?

13 A. YOU KNOW, I'M NOT SURE. I'M NOT SURE. I  
14 REALLY DON'T -- I DON'T RECALL THAT.

15 Q. BUT THE TASK WAS TO -- TO CALL THE VARIOUS  
16 STATES AND IDENTIFY WHETHER OR NOT THEY WERE  
17 REIMBURSING FOR DEY'S PRODUCTS?

18 A. UH-HUH. TO FIND THE STATES THAT DIDN'T AND  
19 ACTIVELY SEEK REIMBURSEMENT FOR ALBUTEROL.

20 Q. WERE YOU ALSO DETERMINING WHAT THEIR  
21 REIMBURSEMENT FORMULA WAS, FOR EXAMPLE, AWP MINUS  
22 OR --

23 A. ABSOLUTELY.

24 Q. -- WHOLESALE COST PLUS?

25 A. I'M SORRY. YEAH. THAT WAS THE -- THAT WAS

1 THE MAIN OBJECTIVE OF THE PROJECT.

2 Q. DID YOU UNDERSTAND WHY THAT WAS IMPORTANT TO  
3 DEY'S MANAGERS?

4 A. NO, NOT AT THE TIME. I DIDN'T HAVE A CLUE.  
5 IT WAS JUST MY VERY FIRST PROJECT, SO I DUG IN.

6 Q. AS YOU DUG IN AND STARTED EXECUTING THE TASK  
7 THAT WAS GIVEN TO YOU DID YOU COME TO AN UNDERSTANDING  
8 AS TO WHY THAT INFORMATION WAS IMPORTANT TO DEY?

9 A. EVENTUALLY, YES. I -- I COMPLETELY  
10 UNDERSTOOD THE REIMBURSEMENT STRUCTURES AND -- AND HOW  
11 IT DROVE GENERIC SUBSTITUTION BUSINESS.

12 Q. AND WHAT IS THE UNDERSTANDING THAT YOU CAME  
13 TO AS FAR AS THE REIMBURSEMENT AND HOW IT DROVE  
14 GENERIC SUBSTITUTION BUSINESS?

15 A. PHARMACISTS, RETAIL PHARMACISTS ARE  
16 REIMBURSED BASED ON THE FORMULA AWP MINUS 30 PERCENT  
17 WHATEVER THE STATE DOES, SO IF THAT'S -- IF THAT'S  
18 FINANCIALLY REWARDING TO THEM AND INCENTIVIZES THEM TO  
19 MAKE THAT SUBSTITUTION OVER THE BRAND.

20 Q. AND WHEN YOU'RE TALKING ABOUT COMPETITION  
21 BETWEEN GENERICS, DID YOU UNDERSTAND THAT YOUR  
22 CUSTOMERS, YOUR PHARMACY CUSTOMERS WERE ALSO  
23 INTERESTED NOT IN COMPETITION VERSUS THE BRAND, BUT IN  
24 COMPETITION AMONG GENERICS, DID YOU UNDERSTAND THAT  
25 YOUR CUSTOMERS, YOUR PHARMACY CUSTOMERS WERE ALSO

1 INTERESTED IN -- IN THAT PRICING?

2 MR. FLECKMAN: OBJECTION, FORM.

3 MR. MCDONALD: OBJECTION, FORM.

4 Q. (BY MR. WINTER) FROM TIME TO TIME YOU'LL  
5 HEAR AN OBJECTION. USUALLY IT'S GOING TO BE AN  
6 OBJECTION, FORM, LIKE THE ONES YOU'VE JUST HEARD AND  
7 THEY'RE PRESERVING THEIR RIGHTS FOR ARGUMENT LATER ON  
8 AND YOU MAY PLEASE CONTINUE TO ANSWER THE QUESTION.

9 MR. FLECKMAN: LET ME JUST -- LET ME  
10 JUST INTERJECT. WHEN WE DO THAT IT'S SIMPLY TO  
11 PROTECT THE RECORD AND IT MAY INVOLVE THE QUESTION --  
12 THE WAY HE PHRASED HIS QUESTION. IT MAY NOT BE IN  
13 ACCORDANCE WITH THE EVIDENTIARY RULES OR IT MAY ASK  
14 YOU TO GUESS OR MAKE ASSUMPTIONS THAT YOU'RE NOT  
15 KNOWLEDGEABLE OF. WE SIMPLY STATE OUR OBJECTION. YOU  
16 GO AHEAD AND ANSWER IF YOU'RE SO INCLINED AND IF YOU  
17 HAVE FACTUAL INFORMATION TO IMPART.

18 A. OKAY. CAN YOU REPEAT THE QUESTION FOR ME?

19 Q. (BY MR. WINTER) SURE. I'LL TRY AND ASK IT  
20 IN A BETTER WAY, TOO. YOUR TESTIMONY WAS THAT YOU  
21 UNDERSTOOD THAT YOUR PHARMACY CUSTOMERS, DEY'S  
22 PHARMACY CUSTOMERS, WERE INTERESTED IN PRICING BECAUSE  
23 IF THEY COULD MAKE A PROFIT ON THE GENERIC THEY WOULD  
24 TEND TO CHOOSE THAT OVER THE BRAND; IS THAT ACCURATE?

25 A. THE RETAIL PHARMACISTS WERE INTERESTED IN THE

1 PRICING STRUCTURE, YES.

2 Q. AND MY QUESTION IS I UNDERSTAND WHAT YOU'VE  
3 ANSWERED IN THE CONTEXT OF A RETAIL PHARMACIST LOOKING  
4 AT PRICING WHEN COMPARING BRANDED PRICES TO GENERIC  
5 PRICES. AND MY QUESTION NOW IS WHEN COMPARING PRICING  
6 AMONG GENERICS WAS -- WAS THAT PRICING ALSO AN ISSUE  
7 IN YOUR EXPERIENCE?

8 MR. MCDONALD: OBJECT TO THE FORM.

9 MR. FLECKMAN: OBJECTION TO FORM, ALSO.

10 A. THE BEST OF MY MEMORY THAT'S -- IT'S -- PRICE  
11 IS ALWAYS IMPORTANT AND THE -- WHETHER IT'S A BRANDED  
12 OR A GENERIC THAT YOU'RE COMPETING AGAINST THE  
13 PHARMACIST IS -- RETAIL PHARMACIST WILL LOOK AT THE  
14 REIMBURSEMENT STRUCTURE FOR HIMSELF TO MAKE SURE THAT  
15 HE'S DRIVING A PROFITABLE BUSINESS ON HIS OWN AS WELL.

16 Q. (BY MR. WINTER) SO, FOR EXAMPLE, MEDICAID  
17 REIMBURSEMENT PROFIT IS GOING TO BE AN ISSUE OR FACTOR  
18 THAT'S IMPORTANT TO A RETAIL PHARMACIST, CORRECT?

19 MR. MCDONALD: OBJECT TO THE FORM.

20 A. FROM MY CONVERSATIONS WITH PHARMACISTS THAT  
21 WAS A CONCERN, YEAH.

22 Q. (BY MR. WINTER) DID YOU DEAL WITH  
23 PHARMACISTS? DID YOU HAVE IN THE ORDINARY COURSE OF  
24 YOUR BUSINESS CONVERSATIONS WITH DEY'S PHARMACIST  
25 CUSTOMERS?